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**OFFICE OF PETITIONS**

In re Patent No. 6,059,140 :  
Issue Date: 05/09/2000 :  
Application Number: 09/263,127 : ON PETITION  
Filing Date: 03/05/1999 :  
Attorney Docket Number: :  
17958.001 :  
:

This is a decision on the petition, filed on July 15, 2011, regarding the second maintenance fee payment for the above-referenced patent, which is treated as a petition under 37 CFR 1.377.

The petition is dismissed.

The patent issued on May 9, 2000. The first maintenance fee was timely paid. The second maintenance fee could have been paid from May 9 through November 9, 2007, or, with a surcharge, from November 10, 2007, through May 9, 2008. The patent expired at midnight on May 9, 2008, for failure to timely pay the second maintenance fee.

On May 20, 2011, an unsigned paper styled as a petition under 37 CFR 1.377 was filed. On June 23, 2011, the Office mailed a letter dismissing the petition.

Patentee again asserts that the second maintenance fee was timely paid via a check submitted to the USPTO on October 10, 2007. Patentee further states that when the third maintenance fee was submitted, it was returned by the USPTO for failure to timely pay the second maintenance fee. Patentee has included a copy of the check sent in payment of the second maintenance fee.

A grantable petition under 37 CFR 1.377 to accept and record a maintenance fee requires:

- (1) submission of the petition be submitted within two months of the action complained of;
- (2) payment of the petition fee;
- (3) proof that the maintenance fee, and any applicable surcharge, was received in the Office prior to the date of patent expiration, and
- (4) proof that proper identification of the under 37 CFR 1.366(c) was submitted with the maintenance fee payment.

The petition lacks item (3).

In regard to item (3), above, the showing of record does not adequately establish that a maintenance fee payment for U.S. Patent No. 6,059,140 was timely received in the USPTO prior to the date of patent expiration.

Specifically, while petitioners have provided a copy of the check stub purportedly showing that the second maintenance fee was sent on October 10, 2007, there is no showing that the payment was actually received at the USPTO.

In this regard, a review of Office financial records indicates that no payment was received on October 10, 2007, in the USPTO. Petitioner is asked to explain whether the check was cashed. If petitioner has a copy of the cancelled check, a copy of the front and back of the check should be submitted with any renewed petition. If any other correspondence (i.e., a transmittal letter) sent to the Office with the fee payment, a copy of said correspondence should be provided to assist in determining whether or not the payment was actually received in the Office.

Any renewed petition under 37 CFR 1.377 should include evidence as would reasonably establish that the second maintenance fee payment for the present patent was actually received in the Office. Acceptable evidence would include an Express Mail receipt showing the request to pay the maintenance fee, and payment thereof, was mailed using the Express Mail procedure under 37 CFR 1.10, or a Certificate of Mailing under 37 CFR 1.8 showing that the request and payment was mailed by that procedure. Additionally, if a return receipt postcard was sent to the Office with the payment in accordance with MPEP 503, a copy of the postcard returned to petitioner, showing the date of receipt in the USPTO, should be enclosed as well.

Accordingly, the showing of record is that petitioner intended or attempted to timely send the maintenance fee payment to the USPTO, but not that the payment was actually received in the USPTO.

Absent an acceptable showing that not only was the payment mailed on or before the date of expiration of the patent, but also that the payment was actually received in the Office, petitioners may wish to file a renewed petition under 37 CFR 1.378(b), since 37 CFR 1.377 applies only to instances where the payment was actually received in the Office, but the Office did not accept that payment.

Accordingly, the petition is dismissed for a lack of evidence showing that the maintenance fee payment was timely received in the Office.

Any renewed petition should be submitted within **TWO (2) MONTHS** to be considered timely. This time period is not extendable.<sup>1</sup>

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Mail Stop Petition  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX:           (571) 273-8300  
                  Attn: Office of Petitions

By hand:          Customer Service Window  
                  Mail Stop Petition  
                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

A reply may also be filed via the EFS-Web filing system of the USPTO.

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<sup>1</sup> 37 CFR 1.181(f).

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Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the printed name.

Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions